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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/669,985	09/23/2003	Ivano Gagliardi	CM2698	9736
27752	7590	01/03/2005		
THE PROCTER & GAMBLE COMPANY INTELLECTUAL PROPERTY DIVISION WINTON HILL TECHNICAL CENTER - BOX 161 6110 CENTER HILL AVENUE CINCINNATI, OH 45224			EXAMINER CHAPMAN, GINGER T	
			ART UNIT 3761	PAPER NUMBER

DATE MAILED: 01/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/669,985

Applicant(s)

GAGLIARDI ET AL.

Examiner

Ginger T Chapman

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 November 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION***Response to Arguments***

In response to applicant's arguments that (1) the objectives of the prior art differ from the object of the present invention and (2) that the use of AB Lorentzen & Wettre stiffness tester reveal a showing of unexpected results, i.e. articles having different structure and compositions exhibit different flexibility behaviors, is not persuasive.

The structure and compositions of the prior art applied to the claimed invention appear to be substantially identical to Applicants' although the property or characteristic of flexibility is not explicitly disclosed by the references. Under the principles of inherency, if the prior art teaches the identical composition, the properties applicant discloses and/or claims are necessarily present. Applicant has not met the burden of showing that the prior art references having substantially identical structure and composition as applied against the claimed invention do not possess the characteristics of the claimed article, i.e. yielding different flexibility behaviors when tested according to AB Lorentzen & Wettre stiffness tester at the same temperatures and relative humidities as the claimed invention.

However, the descriptive matter, i.e. the flexibility of the thermoplastic composition present in the absorbent article, as disclosed by the prior art based on the determination that the substantially identical polymers, plasticizers, resins and superabsorbent material in particle form are present in substantially identical amounts in the composition and thus the inherent characteristics of the article to perform substantially identically under the same test conditions and use conditions flows from the teachings of the prior art applied. Applicant has not

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established an unobvious difference between the claimed article and the prior art references applied to the article.

Applicant has tested other absorbent articles having different structures and different compositions according to AB Lorentzen & Wettre stiffness test, but applicant has not tested articles disclosed as having the claimed composition, nor has applicant tested prior art articles known to have substantially identical compositions. Applicant test results merely reveal the expected showing that absorbent articles having different structural compositions perform differently from each other, and further perform differently at different temperatures and relative humidities.

Thus, Applicant has not met the burden of showing different flexibility behaviors; Applicant has not submitted evidence showing that the prior art references having substantially identical compositions would perform differently from applicants' product when tested according to the same procedure as the present claimed invention. Applicant merely asserts that the objectives of the prior art differ from the object of the present claimed invention and points to test results showing that articles that do not have the same composition or structure do not exhibit flexibility behaviors that are similar to Applicant's product.

The fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

Claim Rejections - 35 USC § 102/103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1 and 3-8, 10-13 and 15-16 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over U.S. Patent No. 5,372,766 issued to Roe.

When viewing the claimed invention the limitations drawn to test results, i.e. flexibility measured according to stiffness tester at 38°C. ... , are being considered as product-by-process limitations. Accordingly, section 2113 of the MPEP, some of which is reproduced below, dictates the manner in which the claims have been examined. Since the product can only be understood by finding the result of certain claimed properties, which are the result of tests, the burden of proof to overcome any rejection must be shifted to the applicant. Where applicant claims a composition in terms of a function, property or characteristic and the composition of the prior art is the same as that of the claim but the function is not explicitly disclosed by the reference, the examiner may make a rejection under both 35 U.S.C. 102 and 103, expressed as a 102/103 rejection.

Roe ('766) discloses a flexible absorbent article applicable to, *inter alia*, diapers and sanitary napkins (col. 22, line 48-49) having a thickness between about 0.25mm and 10mm, preferably between about 0.5mm and about 3mm, typically about 1mm (col. 4, line 49 and lines 54-55) and having polymer particle size distributions wherein at least about 95% by weight of the particles have a particle size between about 90 microns and about 180 microns (col. 6, lines 8-10) and absorptive capacity from about 40 grams to about 70 grams of synthetic urine per gram

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of polymer material (col. 8, lines 15-18) and utilizing plasticizers from at least about 0.45 to at least about 0.60 parts by weight of the plasticizer per one part by weight of the particles (col. 18, lines 45-49) and up to about 1 part by weight (col. 20, line 20-21) to impart flexibility to the article under conditions of higher temperatures such as temperatures of over about 120°F (48.8°C) (col. 18, line 21-24) wherein the article is flexible in use conditions (col. 21, line 58) and the resilience of the flexible article improves the comfort of the wearer of the article (col. 21, lines 63-65) and provides improved absorbent efficacy via reduced stiffness (col. 21, line 60).

Roe ('766) teaches absorbent articles wherein samples of the article are exposed to conditions of, *inter alia*, 80° F (26.6°C) / 80% relative humidity (RH) (col. 28, line 8) and 120±5°F (48.8°C) / 8% RH (col. 29, line 43) and having flexibilities tested according to the Flexibility by Bending Angle at Cracking or Breaking test (col. 28, lines 39-40 and Table 1 at col. 30).

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 9 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roe ('766) and further in view of U.S. Patent No. 5,859,074 issued to Rezai et al.

Rezai et al ('074) disclose a flexible absorbent article placed and worn against the body of the wearer (col. 24, line 24) that can be handled easily (col. 30, line 58), imparts a high degree of comfort to the wearer (col. 2, lines 56-60) and is flexible when subjected to temperatures of up to 50°C. Additionally, Rezai et al teach that the desired flexibility effects can be varied by varying the amount of plasticizer used in the composition of the article (col. 14, lines 4-7) and

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that suitable plasticizers include water alone or in combination with humectants and coplasticizers (col. 17, lines 39-40). Further, Rezai et al teach that in the instance of water alone used as a plasticizer, placing the article in a high humidity environment of greater than 70% relative humidity (RH) imparts greater flexibility to the article (col. 17, lines 44-46).

Rezai et al teach absorbent articles maintaining flexibility at room temperatures of 23-27°C (col. 20, line 61) and exhibiting improved flexibility (col. 32, line 11) at temperatures up to 50°C (col. 31, line 61) and having a flexibility determined by the Bending Modulus test from about 0.1 gfc²/cm to 1.0 gfc²/cm (col. 21, line 5) according to bending tester Pure Kawabata Bending Tester, Kato Tech. Co. Ltd (col. 32, line 2).

In particular, Rezai et al teach an absorbent article wherein the absorbent is configured in a plurality of unattached spaced apart zones such as strips (col. 28, lines 63-67 to col. 29, lines 1-6) wherein the spacing of absorbent strips presents a more effective surface area for acquiring and holding discharged liquids. Therefore, to configure the absorbent material of Roe ('766) into zones of strips or stripes as taught by Rezai et al. to produce a flexible absorbent article having longitudinal fluid acquisition and distribution would have been an obvious modification to one having ordinary skill in the art at the time the invention was made.

Examiner maintains that the teachings of Anjur ('542), cited in a prior Office action (U.S. Patent No. 5,645,542), and Roe ('766) in view of Rezai et al ('074) provide all that is claimed in the instant application.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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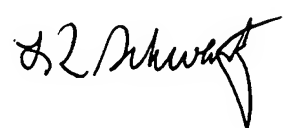
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ginger T Chapman whose telephone number is (571) 272-4934. The examiner can normally be reached on Monday through Friday 8:30 a.m. to 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Schwartz can be reached on (571) 272-4390. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ginger Chapman
Examiner, Art Unit 3761



Larry I. Schwartz
Supervisory Patent Examiner
Group 3700